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CLERK'S COPY. *Sup. Ct.*

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 72

THE UNITED STATES, PETITIONER

vs.

STANDARD RICE COMPANY, INC.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

✓ PETITION FOR CERTIORARI FILED APRIL 28, 1944
CERTIORARI GRANTED JUNE 12, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 944

THE UNITED STATES, PETITIONER

vs.

STANDARD RICE COMPANY, INC.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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In the Court of Claims of the United States

No. 45584

STANDARD RICE COMPANY, INC., CLAIMANT

v.

UNITED STATES OF AMERICA, DEFENDANT.

Petition

Filed November 13, 1941

To the Honorable Chief Justice and the Associate Justices of the Court of Claims of the United States:

1. Claimant, Standard Rice Company, Inc., is now, and at all times material hereto has been, a corporation organized and existing under the laws of the State of Texas, having its principal office in Houston, Texas, and within the First Texas Internal Revenue Collection District.

2. The Commissioner of Internal Revenue, the Collector of Internal Revenue for the First Texas District, and the Comptroller General of the United States, all hereinafter mentioned, were officers of the United States duly qualified and appointed to act for and on behalf of the United States in the matters hereinafter set forth.

3. On information and belief, claimant avers that each and every sum hereinafter stated to have been paid by it was paid to the Collector of Internal Revenue for the First Texas District, and was thereafter turned over and deposited by him with the Treasurer of the United States, in the usual course of official business.

4. On or prior to October 15, 1935, claimant filed with the Collector of Internal Revenue for the First Texas District, its federal income tax return for the fiscal year ended July 31, 1935, disclosing a tax due of Twenty-five Thousand Five Hundred Two and 43/100 Dollars (\$25,502.43), which amount claimant paid to said Collector in four equal installments, one each on October 15, 1935, January 15, 1936, April 15, 1936, and July 15, 1936.

5. Thereafter, H. M. Clemow, one of the field agents of the Commissioner of Internal Revenue, audited claimant's income tax return for the fiscal year ended July 31, 1935, and determined that claimant had made an overpayment in income tax for that year in the amount of Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23). In due course, the Commissioner of Internal Revenue caused certificate of overassess-

ment No. 1408269 to be issued showing that this sum was owing to claimant. Copy of this certificate of overassessment is attached hereto as Exhibit A.

6. Payment not having been made on the overassessment (for reasons hereinafter set forth), claimant, on or about June 13, 1938, filed with the Collector of Internal Revenue for the First District of Texas, its claim for refund of said sum of Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23), being the overpayment of income taxes for the fiscal year ended July 31, 1935. Claimant has not received notice by the Commissioner of Internal Revenue by registered mail, or otherwise, of the disallowance of such claim for refund, or of any part thereof; and claimant avers on information and belief that the Commissioner of Internal Revenue has not mailed such notice.

7. On or prior to October 15, 1938, claimant filed with the Collector of Internal Revenue for the First Texas District, its federal income tax return for the fiscal year ended July 31, 1938, disclosing a tax due of Twenty-five Thousand Six Hundred Seventy-seven and 99/100 Dollars (\$25,677.99), which amount claimant paid to said Collector, in four equal installments, one each on October 15, 1938, January 15, 1939, April 15, 1939, and July 15, 1939.

8. Thereafter, claimant discovered that, instead of having a net taxable income for the fiscal year ended July 31, 1938, it had sustained a net loss for that year, and that consequently the income tax had been erroneously and illegally paid and collected. Claimant thereupon, on or about October 13, 1939, filed claim for refund for such tax of Twenty-five Thousand Six Hundred Seventy-seven and 99/100 Dollars (\$25,677.99), with the Collector of Internal Revenue for the First Texas District; and thereafter, field agents of the Commissioner of Internal Revenue audited claimant's income tax return for the year in question and determined

4 that there had, in fact, been an overpayment by claimant of tax in the amount claimed. In due course, the Commissioner of Internal Revenue caused certificate of overassessment No. 2544993 to be issued showing that this sum (\$25,677.99) was owing to plaintiff. Copy of this certificate of overassessment is attached hereto as Exhibit B.

9. On or about February 6, 1941, claimant received partial refund from the United States of the overpayment of income tax for the year ended July 31, 1938, such partial payment amounting to Nineteen Thousand Five Hundred Thirty-two and 62/100 Dollars (\$19,532.62), plus interest thereon. Refund of the balance of Six Thousand One Hundred Forty-five and 37/100 Dollars (\$6,145.37) has not been made, for reasons hereinafter set forth.

10. Since the filing of the above mentioned claim for refund for Twenty-five Thousand Six Hundred Seventy-seven and 99/100 Dollars (\$25,677.99) on account of overpayment of income tax for the fiscal year ended July 31, 1938, claimant has not received notice by the Commissioner of Internal Revenue by registered mail, or otherwise, of the disallowance of such claim for refund, or of any part thereof; and claimant avers on information and belief that the Commissioner of Internal Revenue has not mailed such notice.

11. On or about November 13, 1935, Claimant entered into a contract with defendant, being contract No. NOs-45097 (copy of which is attached hereto as Exhibit C), under which claimant agreed to supply rice to the Navy Department at the bid prices specified in the contract. As more exactly appears from the con-

tract, the prices fixed therein for the rice sold thereunder were stated as flat amounts per pound, such prices representing the total cost of the rice to the United States. The amount of tax, if any, applicable to the rice sold was not shown separately, but was "buried in the price" along with costs of raw materials, labor, transportation, etc.

12. As appears from Exhibit C, the contract contained the following provision:

"Prices bid herein include any federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

13. With respect to the rice delivered under the contract, and the processing thereof, plaintiff paid all valid taxes, duly and legally imposed. Under the terms of the contract, Claimant delivered to the United States 584,800 pounds of milled rice, and received full payment therefor from the United States, in accordance with the terms of the contract, in December, 1935, and January, February, and March, 1936.

14. On April 1, 1935, pursuant to the provisions of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 31), as amended, a tax of one cent (1¢) per pound on the first domestic processing of rough rice was imposed. Claimant paid the tax on rice processed by it from April 1, 1935 to September 30, 1935. Before paying the tax on rice processed in October 1935, however, claimant sought, in a proceeding filed by it in the United States District Court for the Western District of

Texas (No. 577 in Equity) to enjoin the collection of the tax on rice processed in October 1935 and thereafter, on the ground of the invalidity of the Agricultural Adjustment Act. That court did enjoin the collection of the tax by the Collector of Internal Revenue for the First Texas District upon the condition that, awaiting a decision by the Supreme Court of the United States on the constitutionality of the Act, claimant deposit in a San Antonio, Texas, bank the amount equal to the processing taxes accrued each month. Complying with this condition, claimant deposited the October and November, 1935, taxes in the designated bank, but before the deposit covering December processing was made, the Agricultural Adjustment Act was held unconstitutional by the Supreme Court of the United States, and claimant simply did not make any payments with respect to that period. After the Supreme Court rendered its decision on January 6, 1936, declaring the Act invalid, the money so deposited was returned to claimant.

15. Rough rice is (and was at the time claimant and the United States entered into Contract No. NOS-45097) bought and sold on the open market, at fluctuating prices which are influenced by many different factors, and neither claimant nor any other rice miller controls and can control such prices. Likewise, clean rice is sold on the open market at fluctuating prices, influenced not only by general economic factors, but also by factors peculiar to the rice business, such as prices of directly competitive foods (wheat, potatoes, etc.). Thus, neither claimant nor any other rice miller,

7 could arbitrarily depress the market for rough rice or arbitrarily raise the price of clean rice to the extent of the processing tax imposed, or necessarily to any substantial part thereof. The extent to which claimant bore the tax or shifted it to others is incapable of ascertainment with even a fair degree of accuracy, and this was particularly true for the period (October 1, 1935, to January 6, 1936), during which claimant was relieved of payment of the processing tax, when the market price of rice was strongly affected by the general impression, then prevailing, that the Agricultural Adjustment Act was invalid, and that impounded funds would be returned to processors. Claimant cannot be said to have received, by virtue of its receipt of the impounded funds, anything belonging in equity to the United States.

16. The Comptroller General, on behalf of the United States, asserted claim against claimant for Eight Thousand Four Hundred Seventy-nine and 60/100 Dollars (\$8,479.60) (being United States claim No. 0280086), on the erroneous theory that there had been an overpayment by the United States on contract No. NOS-45097, since claimant had failed to pay the processing tax on the

rice delivered under the contract. In computing the amounts claimed, the Comptroller General used \$.0145 per pound of milled or clean rice as the equivalent of the processing tax of \$.01 per pound of rough rice. This conversion factor of \$.0145 per pound was established by Regulations made, pursuant to the Agricultural Adjustment Act, by the Secretary of Agriculture, with the approval of the President, dated March 30, 1935, as revised and, in part, superseded by Regulations made by the Acting Secretary of Agriculture, with the approval of the President, dated 8 July 31, 1935, Treasury Decision 4586. The amount of \$8,479.60 claimed by the Comptroller General was computed as follows:

Item	Quantity (pounds)	Tax rate (per lb.)	Total tax
Rice.....	584,800	0.0145	\$8,479.60

17. As heretofore alleged, payment of Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23) under certificate of overassessment No. 1408269, issued by the Commissioner of Internal Revenue on account of claimant's overpayment of income taxes for the fiscal year ended July 31, 1935, was withheld by the Comptroller General, who, on July 30, 1937, and January 10, 1938, issued his Notices of Settlement of Claim of the General Accounting Office (certificate No. 0455908, dated July 30, 1937, and certificate No. US-4738-Navy, dated January 10, 1938; claim No. 0280086), in which he certified that Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23) was due to claimant on account of income tax overassessed for the taxable year ended July 31, 1935, but that this sum had been credited by him against the alleged indebtedness of Eight Thousand Four Hundred Seventy-nine and 60/100 Dollars (\$8,479.60) under contract No. NOs-45097, leaving a balance on said indebtedness of Six Thousand One Hundred Forty-five and 37/100 Dollars (\$6,145.37). Copies of such Notices of Settlement of Claim of the General Accounting Office are attached hereto as Exhibits D and E, respectively.

18. As heretofore alleged, payment of Six Thousand One Hundred Forty-five and 37/100 Dollars (\$6,145.37) under certificate of overassessment No. 2544993, issued by the Commissioner of Internal Revenue for Twenty-five Thousand Six Hundred Seventy-seven and 99/100 Dollars (\$25,677.99) on account of claimant's overpayment of income taxes for the fiscal

year ended July 31, 1938, was withheld by the Comptroller General who, on April 24, 1941, issued his Notice of Settlement of Claim of the General Accounting Office (claim No. 0280086(3)), in which he stated that \$6,145.37, representing refund to claimant of income tax overassessed for the taxable year ended July 31, 1938, was allowed in full, but that this sum was being credited by him against the balance of \$6,145.37 of the alleged indebtedness under contract No. NOs-45097. Copy of this Notice Settlement of Claim of the General Accounting Office is attached hereto as Exhibit F.

19. On or about October 28, 1939, claimant paid to the Collector of Internal Revenue for the First Texas District Seventy-two Thousand Seventy-two and 30/100 Dollars (\$72,072.30) in unjust enrichment taxes, imposed by Title III of the Revenue Act of 1936, on account of its having been relieved of the payment of processing taxes as set out in paragraph 14 above.

20. No portion of the overpayments of income tax for the fiscal years ended July 31, 1935, and July 31, 1938, which were wrongfully and illegally withheld by the Comptroller General, as aforesaid, has ever been refunded, repaid, or legally credited.

21. Claimant has at all times borne true allegiance to the government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government, and it is the sole and absolute owner of the claim herewith presented; claimant has made no transfer or assignment of said claim, or of any part thereof, and it is justly entitled to the amounts claimed herein from the United States after allowing all just credits and set-offs.

Claimant therefore prays for judgment in its favor against the United States of America, for the sum of Two Thousand Three Hundred Thirty-four Dollars, Twenty-three Cents (\$2,334.23), plus the sum of Six Thousand One Hundred Forty-five Dollars, Thirty-seven Cents (\$6,145.37), representing overpayments of income taxes for the taxable years ended July 31, 1935 and July 15, 1938, respectively, wrongfully and illegally withheld or credited by defendant, plus interest on both amounts as required by law, and the costs and disbursements of this action, and for such other and further relief as may to this Honorable Court seem just and proper.

JOHN C. WHITE,

838 Transportation Building, Washington, D. C.,

Attorney for Claimant.

[Duly sworn to by John C. White; jurat omitted in printing]

11.

Exhibit A to petition

TREASURY DEPARTMENT

OFFICE OF COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

Income Tax Unit.

IT: C: CC.

CERTIFICATE OF OVERASSESSMENT

Number: 1408269.

Allowed: \$2,334.23.

Schedule No. 59672.

STANDARD RICE COMPANY, INC.,

Post Office Drawer 2731, Houston, Texas.

Sirs: An audit of your income tax return, form 1120 and a consideration of all the claims (if any) filed by you for the Fiscal year ended July 31, 1935 indicates that the tax assessed for that year was in excess of the amount due:

Income Tax Assessed:

Original, account #400031 October ----- \$25,502.43

Correct tax liability ----- 23,168.20

Overassessment ----- 2,334.23

The adjustments producing this overassessment are shown in the revenue agent's report, a copy of which has been furnished you under date of November 10, 1936.

The portion of this overassessment which represents an overpayment, if any, is refunded or credited in accordance with the provisions of section 322 of the Revenue Act of 1934.

12 The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

F. L. HUDSON,
Head of Division.

Credited: \$ (Copy of Certificate Attached).

Refunded: \$2,334.23.

NOTE.—The interest, if any, included herein is taxable income, and must be included in your income tax return for the year in which received.

UNITED STATES VS. STANDARD RICE CO., INC.

GENERAL ACCOUNTING OFFICE

WASHINGTON

Audit Division.

PREAUDIT DIFFERENCE STATEMENT

BUREAU OF INTERNAL REVENUE,

TREASURY DEPARTMENT,

March 31, 1937.

Schedule No. IT-59672

(Name of payee) Standard Rice Co., Inc.; (Bureau Voucher No.) List 7122.

Amount proposed for payment, \$2,429.13.

Schedule returned without certification of the amount indicated above.

The records of this office indicate that Standard Rice Co. Inc., is indebted to the U. S. for processing tax.

13 It is requested that the name of the taxpayer be eliminated from this schedule and the amount shown above rescheduled to this office for direct settlement.

CERTIFICATE OF SETTLEMENT

GENERAL ACCOUNTING OFFICE,

Washington, D. C.,

July 30, 1937.

Certificate No. 0455908.

Claim No. 0280086.

Treas.

STANDARD RICE COMPANY, INCORPORATED,

POST OFFICE DRAWER 2731, HOUSTON, TEXAS.

Check to issue as noted below:

I certify there is due from the United States to the above-named claimant(s), payable from the appropriation(s) indicated, the sum of Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23) on account of payment of income tax overassessed for the taxable year ended July 31, 1935, certificate of overassessment Number 1408269, as listed on supplemental Schedule No. IT-59672, dated April 5, 1937.

2080903 Refunding Internal Revenue Collections, 1938 and Prior Years.

Check to issue:

Treasurer of the United States for deposit to the credit of the appropriation: "17-0806 Naval Supply Account Fund."

This action is taken to effect partial collection of the indebtedness of Standard Rice Company, Inc., under Contract No. Nos. 45097, dated November 13, 1935, described herein resulting from overpayments consisting of the amount of processing tax included in the price of supplies paid for on the described vouchers, but which, as indicated by the record, has not been paid by the contractor to the United States.

Total tax included in bid price and deductible under above contract, \$8,479.60.

The amount of \$2,334.23 having been set-off against the indebtedness of \$8,479.60, as explained above, there remains due the United States under the contract No. Nos. 45097, supra, a balance of \$6,145.37. Remittance of this amount should be made promptly to this office by bank draft or certified check made payable to "The United States."

Issue warrant(s) and send check(s) to claimant(s).

R. N. ELLIOTT,
*Acting Comptroller General
of the United States.*

By J. H. ROE.

(Division of Disbursement.)

15

Exhibit B, to petition

TREASURY DEPARTMENT

OFFICE OF COMMISSIONER OF INTERNAL REVENUE

WASHINGTON

Income Tax Unit
IT:CI:CC

CERTIFICATE OF OVERASSESSMENT

Number: 2544993.

Allowed: \$25,677.99.

Schedule No. 74630.

STANDARD RICE COMPANY, INC.,

Butler Street and S. P. Railroad, Houston, Texas.

SIR: An audit of your income tax return, Form 1120, and a consideration of all the claims (if any) filed by you for the taxable year ended July 31, 1938, indicates that the tax assessed for that year was in excess of the amount due:

Tax Assessed:

Original, account No. Oct. 1938, #400044

Correct liability

Overassessment

Income Tax

\$25,677.99

None

25,677.99

This overassessment is in accordance with adjustments to your tax liability to which you have agreed.

The amount of the overassessment will be abated, credited, or refunded as indicated below. (You will be relieved from the payment of any amount abated; if an overpayment has been made and other taxes are due, credit will be made accordingly, and any amount refundable is covered by a Treasury check transmitted herewith.)

16 Included in the accompanying check is interest in the amount stated below, allowed on the refund or credit.

By direction of the Deputy Commissioner:

Respectfully,

T. C. ATKESON,
Head of Division.

Refunded: \$19,532.62—Balance of \$6,145.37 withheld by the Comptroller General for direct settlement of a debt to the United States.

Interest: \$2,018.13

NOTE.—The interest, if any, included herein is taxable income and must be included in your income tax return for the year in which received.

17 *Exhibit C to petition*

STATEMENT AND CERTIFICATE OF AWARD

No. Nos—45097.

Date: 11-13-35.

Washington, D. C.

Bureau of Supplies and Accounts.

S-5916.

Navy Department.

Method of or Absence of Advertising

(Section 3709 of the Revised Statutes)

1. After advertising in newspapers.

2. (a) After advertising by circular letters sent to -----
----- dealers.

(b) And by notices posted in public places.

(If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made. The notation on the certificate below must be "2 (a) (b)" or "2 (a)," depending on whether or not notices were posted.)

3. Without advertising, under an exigency of the service which existed prior to the order and would not admit of the delay incident to advertising.

4. Without advertising in accordance with -----

5. Without advertising, it being impracticable to secure competition because of -----

(Here state circumstances under which the securing of competition was impracticable.)

Award of Contract

Lots 178, 180, 181, 182 awarded the low bidder.

A. To lowest bidder as to price (Expenditures).

B. To other than the lowest bidder as to price (Expenditures).

C. To highest bidder as to price (Receipts).

D. To other than the highest bidder as to price (Receipts).

18

Certificate

I certify that the foregoing statement is true and correct; that the agreement was made in consequence of No. 1 of the method of or absence of advertising and in accordance with award of contract lettered B, as shown above; that where lower bids (expenditure contracts) or higher bids (receipt contracts) as to price were received, a statement of reasons for their rejection, together with an abstract of bids received, including all lower than that accepted in case of expenditure contracts and all higher in case of receipt contracts, is given below or on the reverse hereof or on a separate sheet attached hereto; that the articles or services covered by the agreement (expenditure) are necessary for the public service, and that the prices charged are just and reasonable.

	Lot 184	
	Bid A	Bid B
Standard Rice Co., Inc. (Award)	0.0473	
Empire Wholesale Co., Inc.		0.0484
Rickert Rice Mills, Inc.		.0461025
Western States Grocery Co.		.045

5 bids received. The other bid was higher than the highest price listed.

NOTE.—The accepted Bid "A" was the lowest one received after freight, handling and other charges were added to the f. o. b. prices listed above.

D. B. WAINWRIGHT, Jr.,

Capt. (S. C.) U. S. N.

NOTE.—This statement and certificate will be used to support all agreements, both formal contracts and less formal agreements.

of whatever character, involving the expenditure or receipt of public funds. It must be executed and signed by the contracting officer (unless the award is made by or is subject to approval by an officer other than the contracting officer, when execution and signature may be made by such officer).

Contract No. NOs. 45097.

Opening, October 29th, 1935.

STANDARD GOVERNMENT FORM OF CONTRACT

(As modified for the use of the Navy Department)

(Supplies)

NAVY DEPARTMENT.

BUREAU OF SUPPLIES AND ACCOUNTS

Contract for Rice. Amount, \$27,185.25.

Place, Various.

This Contract, entered into this 18th day of November, 1935, by the United States of America, hereinafter called the Government, represented by the contracting officer executing this contract, and Standard Rice Company Inc., a corporation organized and existing under the laws of the State of Texas, of the city of Houston, in the State of Texas, hereinafter called the contractor, witnesseth that the parties hereto do mutually agree as follows:

ARTICLE 1. Scope of this Contract.—The contractor shall furnish and deliver all supplies or services covered by the items or lots hereto attached, for the consideration stated opposite each item or each lot in the schedules, in strict accordance with the specifications, schedules, and drawings, all of which are made a part hereof.

Deliveries shall be made as follows: As stated in the schedules concerned.

ARTICLE 2. Changes.—Where the supplies to be furnished are to be specially manufactured in accordance with Government drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Government Master Specifications. Changes as to shipment and

packing of all supplies may also be made as above provided. If such changes cause an increase or decrease in the amount due under this contract, or in the time required for its perform-

ance, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than Five Hundred Dollars shall be ordered unless approved in writing by the head of the department or chief of bureau. Any claim for adjustment under this article must be asserted within ten days from the date the change is ordered unless the contracting officer shall for proper cause extend such time, and if the parties can not agree upon the adjustment the dispute shall be determined as provided in Article 12 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the contract as changed.

ARTICLE 3. Extras.—Except as otherwise herein provided, no charge for extras will be allowed unless the same have been ordered in writing by the contracting officer and the price stated in such order.

ARTICLE 4. Inspection.—(a) All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. The Government shall have the right to reject articles which contain defective material or workmanship. Rejected articles shall be removed by and at the expense of the contractor promptly after notification of rejection.

(b) If inspection and test, whether preliminary or final, is made on the premises of the contractor or subcontractor, the contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance tests shall be as described in the specifications. The Government reserves the right to charge to the contractor any additional cost of inspection and test when articles
21 are not ready at the time inspection is requested by the contractor.

(c) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies

as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

ARTICLE 5: Delays—Damages.—If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby: Provided, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the _____ floods, epidemics, quar-

antine restrictions, strikes, freight embargoes, and
22 unusually severe weather but not including delays caused by subcontractors: Provided further, That the contractor shall within ten days from the beginning of any such delay notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and extent of delay, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal within thirty days by the contractor to the head of the department concerned, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

ARTICLE 6. Responsibility for supplies tendered.—The contractor shall be responsible for the articles or materials covered by this contract until they are delivered at the designated point, but the contractor shall bear all risk on rejected articles or materials after notice of rejection. Where final inspection is at point of origin but delivery by contractor is at some other point, the contractor's responsibility shall continue until delivery is accomplished.

ARTICLE 7. Increase or decrease.—Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 per cent, will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, and payments shall be adjusted accordingly.

ARTICLE 8. Payment.—The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries, accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either \$1,000 or 50 per cent of the total amount of the contract.

ARTICLE 9. Additional security.—Should the surety upon
23 any bond that is furnished for the performance of this contract become unacceptable to the Government, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government.

ARTICLE 10. Officials not to benefit.—No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 11. Covenant against contingent fees.—The contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

ARTICLE 12. Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within thirty days to the head of the department concerned, whose decision shall be final and conclusive upon the parties hereto as to such questions of fact. In the meantime the contractor shall diligently proceed with performance.

ARTICLE 13. Definitions.—(a) The term "head of department" as used herein shall mean the head of the executive department or independent establishment involved or his assistant.

(b) The term "contracting officer" as used herein shall include his duly appointed successor or his duly authorized representative.

24. **ARTICLE 14. Alterations.**—The following changes were made in this contract before it was signed by the parties hereto:

ARTICLE 15.—Patents.—The contractor shall hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of this contract, including their use by the Government, unless otherwise specifically stipulated in this contract.

INSTRUCTIONS FOR THE CONTRACT

1. This form or Standard Form No. 33 shall be used whenever a formal contract is entered into for the procurement of supplies and manufactured articles, whether stock or special, except coal, but their use will not be required in foreign countries.

2. There shall be no deviation from this Standard Contract Form, except as provided for in these instructions, without prior approval of the Director of the Bureau of the Budget obtained through the Interdepartmental Board of Contracts and Adjustments. Where interlineations, deletions, additions, or other alterations are permitted, specific notations of the same shall be entered in the blank space following the article entitled "Alterations" before signing. This article is not to be construed as general authority to deviate from the standard form. Deletion of the descriptive matter not applicable in the preamble need not be noted in the article entitled "Alterations."

3. All blank spaces must be filled in or ruled out. The contract must be dated, and the bond must bear the same or subsequent date.

25 4. An officer of a corporation, a member of a partnership, or an agent signing for the principal, shall place his signature and title after the word "By" under the name of the principal. A contract executed by an attorney or agent on behalf of the contractor shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the contractor.

5. If the contractor is a corporation, one of the certificates following the signatures of the parties must be executed. If the contract is signed by the secretary of the corporation, then the first certificate must be executed by some other officer of the corporation under the corporate seal, or the second certificate executed by the contracting officer. In lieu of either of the foregoing certificates there may be attached to the contract copies of so much of the

records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

6. The full name and business address of the contractor must be inserted, and the contract signed with his usual signature. Typewrite or print name under all signatures to contract and bond.

INSTRUCTIONS FOR THE BOND

1. This form shall be used for construction work or the furnishing of supplies, whenever a bond is required.

2. The surety on the bond for any bid or for the performance of the contract may be any corporation authorized by the Secretary of the Treasury to act as surety, or two responsible individual sureties. Individual sureties shall justify in sums aggregating not less than double the penalty of the bond.

3. A firm, as such, will not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stock-
26 holders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stock holdings therein. Sureties, if individuals, shall be citizens of the United States, except that sureties on bonds executed in any foreign country, the Canal Zone, the Philippine Islands, Puerto Rico, Hawaii, Alaska, or any possession of the United States, for the performance of contracts entered into in these places, need not be citizens of the United States, but if not citizens of the United States shall be domiciled in the place where the contract is to be performed.

4. The name, including full Christian name, and residence of each individual party to the bond shall be inserted in the body thereof, and each such party shall sign the bond with his usual signature on the line opposite the scroll seal, and if signed in Maine, Massachusetts, or New Hampshire, an adhesive seal shall be affixed opposite the signature.

5. If the principals are partners, their individual names shall appear in the body of the bond, with the recital that they are partners composing a firm, naming it, and all the members of the firm shall execute the bond as individuals.

6. The signature of a witness shall appear in the appropriate place, attesting the signature of each individual party to the bond.

7. If the principal or surety is a corporation, the name of the State in which incorporated shall be inserted in the appropriate place in the body of the bond, and said instrument shall be executed and attested under the corporate seal as indicated in the form. If the corporation has no corporate seal the fact shall be stated, in

which case a scroll or adhesive seal shall appear following the corporate name.

8. The official character and authority of the person or persons executing the bond for the principal, if a corporation, shall be certified by the secretary or assistant secretary, according to the form attached hereto. In lieu of such certificate there may be attached to the bond copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

9. Each individual surety shall justify, under oath, according to the form appearing on the bond, before a United States commissioner, a clerk of a United States court, a notary public, or some other officer having authority to administer oaths generally. If the officer has an official seal it shall be affixed, otherwise the proper certificate as to his official character shall be furnished. Where citizenship is not required, as provided in paragraph 3 of these Instructions, the affidavit may be amended accordingly.

10. The certificate of sufficiency shall be signed by an officer of a bank or trust company, or by a judge or clerk of a court of record, a United States district attorney or commissioner, a postmaster, a collector or deputy collector of internal revenue, or any other officer of the United States acceptable to the department or establishment concerned.

11. The date of the bond must not be prior to the date of the instrument for which it is given.

AFFIDAVIT BY INDIVIDUAL SURETY

STATE OF TEXAS,

County of Harris, ss:

I, W. K. Morrow, being duly sworn, depose and say that I am one of the sureties to the foregoing bond; that I am a citizen of the United States, and of full age and legally competent; that I reside at 3000 Calumet Drive and that I am worth in real estate and personal property the sum of Ten Thousand dollars, over and above (1) all my debts and liabilities, owing and incurred, (2) any property exempt from execution, (3) and aggregate full penalties on all other bonds on which I am surety, and (4) any pecuniary interest I have in the business of the principal on said bond; that I own, unincumbered, real estate, the fee of which is in my name, worth Ten Thousand dollars, located in Houston, Texas; that said property is not exempt from seizure and sale under any homestead law, community, or marriage

law, or upon any attachment, execution, or judicial process, and that I am not surety on any other bonds, except as follows:

W. K. MORROW.

(Surety's signature.)

Subscribed and sworn to before me this 26th day of November, 1935, at Houston, Texas.

H. G. MURCH,

Notary Public in and for Harris

County, State of Texas.

(Title of official administering oath.)

[OFFICIAL SEAL]

AFFIDAVIT BY INDIVIDUAL SURETY

STATE OF TEXAS,

County of Harris, ss:

I, E. W. Gruendler, being duly sworn, depose and say that I am one of the sureties to the foregoing bond; that I am a citizen of the United States, and of full age and legally competent; that I reside at 4218 Yoakum Blvd. and that I am worth in real estate and personal property the sum of Ten Thousand dollars, over and above (1) all my debts and liabilities, owing and incurred, (2) any property exempt from execution, (3) the aggregate full penalties on all other bonds on which I am surety, and (4) any pecuniary interest I have in the business of the principal on said bond; that I own, unincumbered, real estate, the fee of which is in my name, worth Ten Thousand dollars, located in Houston, Texas; that said property is not exempt from seizure and sale under any homestead law, community, or marriage law, or upon any attachment, execution, or judicial process; and that I am not surety on any other bonds, except as follows:

E. W. GRUENDLER.

(Surety's signature.)

29 Subscribed and sworn to before me this 26th day of November, 1935, at Houston, Texas.

[OFFICIAL SEAL]

H. G. MURCH,

Notary Public in and for Harris County,

State of Texas.

(Title of official administering oath.)

CERTIFICATE OF SUFFICIENCY

I, P. B. Timpson, do hereby certify that W. K. Morrow, one of the sureties named above, is personally known to me, and that, to the best of my knowledge and belief, the facts stated by such surety in the foregoing affidavit are true.

P. B. TIMPSON,
President, Houston Land & Trust Co.,
Houston, Texas.

(Address.)

CERTIFICATE OF SUFFICIENCY

I, P. B. Timpson, do hereby certify that E. W. Gruendler, one of the sureties named above, is personally known to me, and that, to the best of my knowledge and belief, the facts stated by such surety in the foregoing affidavit are true.

P. B. TIMPSON,
President, Houston Land & Trust Co.,
Houston, Texas.

(Address.)

NOTE.—As payment under this contract or any modification thereof can be made only by the Bureau of Supplies and Accounts, no work is to be undertaken involving additional cost or involving a modification in the specifications, drawings, terms, or conditions of this contract, until and unless such additional work or modification has been agreed to in writing by the Bureau of Supplies and Accounts.

Bids on this schedule of supplies for the U. S. Navy will be opened at 10:00 A. M. October 29, 1935.

Schedule 5916

(Supplies and Accounts.)

Original Duplicate
Indicate which by erasure

RICE

Send this schedule, accompanied by bid on standard government form of bid (standard form No: 31, Navy edition), both in duplicate, properly executed in accordance with instructions.

To the
Bureau of Supplies and Accounts,
Navy Department, Washington, D. C.
Bid of

Full Name of Bidder-----
Address-----

Discount: Subject to the conditions specified in Standard Form No. 31, accompanying this schedule, discount will be allowed for payment within calendar days as follows:

Within 10 days-----; Within 20 days-----; Within 30 days-----;
(After Delivery) (After Delivery) (After Delivery)

Bids offering a discount upon any other basis should clearly state the conditions under which the discount is offered.

Delivery to be in accordance with the Conditions Governing Delivery of Supplies to the Navy.

Bids are requested on the basis that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment and/or limitation as to age of employees, in the performance of Government contracts any contract entered into shall be subject to modification to accord with such statutory requirements to the extent authorized or required by law.

Unless otherwise specified by the bidder, it is understood and agreed that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

Prices bid herein include any federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item.

Specifications and General Conditions Governing all Lots of this Schedule as Applicable.

Except as amended, the rice shall be in accordance with "Federal Specification N-R-351," dated April 28, 1931, copies of which may be obtained upon application to the supply officer of any navy yard, the Navy Purchasing Offices, New York, N. Y., and San Francisco, Calif.; or to the Bureau of Supplies and Accounts,

Page 1—

Paragraph B-2—

Grade 1—delete “uncoated.”

Grade 2—delete “uncoated.”

The rice may be of any of the varieties specified under Class A, B and C of the specifications, and shall be Grade 2, Fancy, U. S. No. 2.

32 Attention of bidders is invited to paragraph H1b (1) of the specifications relative to packaging, packing, and marking.

The words “of the latest crop” in paragraph C-1 of specifications is interpreted as rice grown within the current year.

No Samples are Required and None Should be Submitted.

If award for Lots 183 and 184 is made under Bid B for delivery f. o. b. cars at or near contractor's works and shipment is directed subject to final inspection after delivery, it is hereby agreed that the title will pass to the Government at the point of shipment, with the understanding that the material will be inspected at ultimate destination; if rejected, title to revert to the contractor and material to be held at contractor's risk. It is further agreed that if the material is not in accordance with the specifications covered by the contract, it will be replaced at contractor's expenses with other material, upon receipt of notice of rejection.

The expense of replacing material is to be paid by the contractor and title only to pass to the United States upon delivery at ultimate destination, subject to inspection. The contractor further agrees that payment is due only after inspection.

Deliveries for the Navy Yard, Brooklyn, N. Y., shall be made as follows:

Shipments via water carriers shall be consigned to the Supply Officer, Building #3, Navy Yard, Brooklyn, N. Y. Drayage charges are assessed from steamship dock in port of New York and drayage services must be arranged for and payment made by contractors.

Shipments via rail carriers, whether in carload or less than carload lots, should be consigned to supply officer, Building #3, Navy Yard, Brooklyn, N. Y. The navy yard is prepared to receive carload lots by float or lighter. Less than carload lots should be consigned to nearest railroad terminal, from which drayage services must be arranged for and payment made by contractors.

33 The tariff charge assessed by the railroad for unloading materials from the railroad company's lighter to the docks at the Navy Yard, Brooklyn, N. Y., is payable by the shipper as a part of the transportation costs.

Deliveries for the Naval Clothing Depot, Brooklyn, N. Y., shall be made as follows:

Shipments via water carriers should be consigned to the Supply Officer, Annex, Naval Clothing Depot, Twenty-ninth Street and Third Avenue, Brooklyn, N. Y. Drayage charges are assessed from steamship dock in port of New York to Naval Clothing Depot and drayage services must be arranged for and payment made by contractors.

Shipments via rail carriers whether in carload or less than carload lots should be consigned to the Supply Officer, Annex, Naval Clothing Depot, Twenty-ninth Street and Third Avenue, Brooklyn, N. Y., for delivery via Bush Terminal Railroad. Drayage charges are assessed from Bush Terminal Freight Station to the Naval Clothing Depot on less than carload shipments and drayage services must be arranged for and payment made by contractors.

Bids will be rejected if the information requested under each lot is not inserted by the bidder, provided it is decided by the Bureau of Supplies and Accounts that the information is essential.

Unless Otherwise Directed, Bids are Desired Only for Delivery, All Transportation Charges Paid, to the Destinations Named in the Schedule, the Right Being Reserved to Reject Bids for Delivery to Points Other Than Those Specified Under Each Lot.

Inspection will be made After Delivery.

Lot 178—Schedule 5916

Bureau Reqn. 153 NSAF. 13-x-1.

Bureau: S and A.

Purpose: Stock.

To be delivered, all transportation charges paid, to the
34 Supply Officer, Navy Yard, Boston (Charlestown), Mass.,
within 20 days after date of contract or bureau order.

Bidders must insert in the above blank space the shortest time within which they can guarantee delivery. Bidders are requested to estimate this time carefully.

Item	Pounds (about)	Unit price (per pound)	Total
1. Rice.....	25,000	04665	\$1,166.25

Name of packer (not the dealer) Standard Rice Company Inc.
Address Houston, Texas.

For specifications and general conditions see front page of this schedule.

Address

For specifications and general conditions see front page of this schedule.

The Right is Reserved to Make Award for Lot 179 or Lot 180 as may be Considered to be to the Best Interest of the Government.

Lot 180—Schedule 5916

Bureau Reqn. 153. NSAF. 13-x-1.

Bureau: S and A.

Purpose: Stock.

To be delivered, all transportations charges paid, to the Supply Officer, Annex, Naval Clothing Depot, Brooklyn, N. Y., within 15 days after date of contract or bureau order.

Bidders must insert in the above blank space the shortest time within which they can guarantee delivery. Bidders are requested to estimate this time carefully.

Item	Pounds (about)	Unit price (per pound)	Total
1. Rice.....	40,000	0.4575	\$1,830.00

Name of packer (not the dealer) Standard Rice Company Inc.

35 Address Houston, Texas.

For Specifications and general conditions see front page of this schedule.

The Right is Reserved to make Award for Lot 180 or Lot 179 as may be Considered to be to the Best Interest of the Government.

Lot 181—Schedule 5916

Bureau Reqn. 153 NSAF. 13-x-1.

Bureau: S and A.

Purpose: Stock.

To be delivered, all transportation charges paid, to the Supply Officer, Navy Yard, Philadelphia, Pa., within 15 days after date of contract or bureau order.

Bidders must insert in the above blank space the shortest time within which they can guarantee delivery. Bidders are requested to estimate this time carefully.

Item	Pounds (about)	Unit price (per pound)	Total
1. Rice.....	30,000	0.0463	\$1,389.00

Name of packer (not the dealer) Standard Rice Company Inc.
Address Houston, Texas.

For specifications and general conditions see front page of this schedule.

Lot 182—Schedule 5916

Bureau Reqn. 153 NSAF. 13-x-1.

Bureau: S and A.

Purpose: For stock.

To be delivered, all transportation charges paid, to the Officer-in-Charge, Naval Supply Depot, Naval Operating Base, Sewall's Point, Va., within 20 days after date of contract or bureau order.

Bidders must insert in the above blank space the shortest time within which they can guarantee delivery. Bidders are requested to estimate this time carefully.

36	Item	Pounds (about)	Unit price (per pound)	Total
1.	Rice:.....	290,000	0.046	\$13,340.00

Name of packer (not the dealer) Standard Rice Company Inc.
Address, Houston, Texas.

For specifications and general conditions see front page of this schedule.

Approximate shipping weight.....

Volume in cubic feet ready for shipment.....

For specifications and general conditions see front page of this schedule.

Lot 184—Schedule 5916

Bureau Reqn. 153 NSAF. 13-x-1.

Bureau: S and A.

Purpose: Stock.

For Bid A

Bids are desired as follows:

Bid A. To be delivered, all transportation charges paid, to the Supply Officer, Navy Yard, Puget Sound, (Bremerton), Wash., 100,000 pounds, Within 50 Days after date of contract or bureau order and the remainder at the rate of 50,000 pounds Every 15 Days thereafter until completion of contract.

Bid B. To be delivered f. o. b. cars or on wharf at or near contractor's works pounds Within Days after date of contract or bureau order, and the remainder at the rate of pounds Every Days thereafter until completion of contract.

Bidder shall insert below the actual f. o. b. point.

Bidders must insert in the above blank spaces the quantity proposed to be furnished as initial delivery, and also the rate

and shortest time in which deliveries will be made. Bidders are requested to estimate this time carefully.

	Bid A—Deliver at Navy Yard, Fudget Sound, (Bremerton), Wash.			Bid B—F. o. b. cars on wharf at	
	Pounds (about)	Unit price (per pound)	Total	Unit price (per pound)	Total
1. Rice	200,000	0.0473	\$9,460.00		

Name of packer (not the dealer) Standard Rice Company, Inc.
Address, Houston, Texas.

Approximate shipping weight: 101-1/4 lbs. Gross per bag.

Volume in cubic feet ready for shipment, approximately 2 cubic ft. per 100 lb. bag.

For specifications and general conditions see front page of this schedule.

Do not fail to execute and forward standard form No. 31 (Navy edition) with this bid.

(5-page schedule, 8/28/35-MAK)

(S-59916—Page 5)

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,

By _____, *Purchasing Officer,*
Bureau of Supplies and Accounts, Navy Department.
(Official Title).

Two witnesses:

CHAS. H. SHEA.

F. M. SEELEY.

STANDARD RICE COMPANY, INC.,

Contractor,

W. K. MORROW, *President,*

Houston, TEXAS.

(Business Address).

38 I, F. A. Farda, certify that I am the Secretary of the corporation named as contractor herein; that W. K. Morrow who signed this contract on behalf of the contractor, was then president of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

[CORPORATE SEAL]

F. A. FARDA.

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, _____, who signed this contract for the _____, had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

Contracting Officer.

STANDARD GOVERNMENT FORM OF PERFORMANCE BOND

(As modified for use by the Navy Department)

(CONSTRUCTION OR SUPPLY)

Know all Men by these Presents, That we, Standard Rice Company, Inc., as Principal and W. K. Morrow and E. W. Gruendler as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of Six thousand eight hundred dollars lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The Condition of this Obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated November 13th, 1935.

Now therefore, If the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said
39 contract and any extensions thereof that may be granted by the Government, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, and if said contract is for the construction or repair of a public building or a public work within the meaning of the act of August-13, 1894, as amended by act of February 25, 1905, shall promptly make payment to all persons supplying the principal with labor and materials in the prosecution of the work provided for in said contract, and any such authorized extension or modification thereof then, this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this 13th day of November, 1935, the name and corporate seal of each corporate party

being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

STANDARD RICE COMPANY,
Per W. K. MORROW. (Principal.) [SEAL]
W. K. MORROW. (Surety.) [SEAL]
A. W. GRUENDLER. (Surety.) [SEAL]

In presence of—
CHAS. H. SHEA.
F. M. SEELEY.

The rate of premium on this bond is ----- per thousand.

Total amount of premium charged, \$-----

(The above must be filled in by corporate surety.)

If individual sureties sign the above bond the Affidavits and Certificates on the Appended Sheet must be executed.

40

Exhibit D to petition.

NOTICE OF SETTLEMENT OF CLAIM

GENERAL ACCOUNTING OFFICE

Certificate 0455908.

Claim No. 0280086.

WASHINGTON, D. C., July 30, 1937.

Treas.

Check to issue as noted below:

STANDARD RICE COMPANY, INCORPORATED,
Post Office Drawer 2731, Houston, Texas.

I have certified that there is due you from the United States, payable from the appropriation(s) indicated, the sum of Two Thousand Three Hundred Thirty-four and 23/100 Dollars (\$2,334.23) on account of payment of income tax overassessed for the taxable year ended July 31, 1935, certificate of overassessment Number 1408269, as listed on supplemental schedule No. IT-59672, dated April 5, 1937.

2080903 Refunding Internal Revenue Collections, 1938 and Prior Years

Check to issue:

Treasurer of the United States for deposit to the credit of the appropriation: "17-0806 Naval Supply Account Fund."

This action is taken to effect partial collection of the indebtedness of Standard Rice Company, Inc., under Contract No.

Nos-45097, dated November 13, 1935, described herein resulting from overpayments consisting of the amount of processing tax included in the price of supplies paid for on the described vouchers but which, as indicated by the record, has not been paid by the contractor to the United States.

41 The contract involved in this indebtedness contains the following provision:

(See attached sheets.)

R. N. ELLIOTT,

Acting Comptroller General of the United States.

By J. H. ROE.

To claimant(s):

(Division of Disbursement.)

NOTE.—If this settlement is believed to be incorrect in any particular and the matters relied upon by claimant to support such view are clearly stated in a request for review filed with the Comptroller General of the United States at Washington, D. C., within one year from the date hereof, the settlement will thereupon be reviewed under his personal supervision. The inclosed check should not be cashed if its amount includes any item upon which review is requested, but unindorsed should accompany the request for review.

"Prices bid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

Pursuant to the provisions of the Agricultural Adjustment Act, approved May 12, 1933, as amended, Rice Regulations, Series 1, No. 1, made by the Secretary of Agriculture and approved by the President on March 30, 1935, establishing the rate of processing tax imposed on the first domestic processing of rice and the conversion factor of percentage of such rate found necessary to determine the processing tax imposed on a particular product obtained from rice, effective April 1, 1935, as supplemented, revised, and, in part, superseded by regulations made by the Acting Secretary of Agriculture with the approval of the President, dated July 31, 1935, Treasury Decision No. 4586, was issued
42 by the Commissioner of Internal Revenue and approved by the Acting Secretary of the Treasury on September 9, 1935, establishing the rate of processing tax per pound on products obtained from rice effective on and after August 1, 1935.

The evidence of record indicates that the United States did not collect the amount of processing tax imposed by Congress on the items furnished under the described contract, and as a result thereof, under the contract provision quoted herein, after September 1935, the last month covered by full payment of processing taxes by Standard Rice Company, Inc., the United States was obligated to pay, as the contract price, only the bid price less the amount of processing tax included therein. However, payment has been made at the bid price, as hereinafter described, under this contract, for supplies furnished after September 1935, resulting in an overpayment of \$8,479.60, computed as follows:

Contract No. NOs-45097, dated November 13, 1935.

Contractor and shipper: Standard Rice Company, Inc., Houston, Texas. Vouchers Nos. 40638, 44141, 44142, 50181, 50182, 50183, and 59487, December 1935 and January, February, March, 1936, accounts of W. N. Hughes.

Invoice Nos. 1152, 1216, 1215, 1214, 1217, 1335, dated November 29, December 10, 12, and 21, 1935, respectively.

Item	Weight delivered	Weight taxable	Tax rate per pound	Total tax
Rice	584,800	584,800	0.0145	\$8,479.60
Total tax included in bid price and deductible under above contract				8,479.60

The amount of \$2,334.23 having been set-off against the indebtedness of \$8,479.60, as explained above, there remains due the United States under the Contract No. NOs-45097, supra, a balance of \$6,145.37. Remittance of this amount should be made promptly to this office by bank draft or certified check made payable to "The United States."

43

Exhibit E to petition

NOTICE OF SETTLEMENT OF CLAIM

GENERAL ACCOUNTING OFFICE,
Washington, D. C., January 10, 1938.

In reply refer to
Certificate No. US-4738-Navy,
Navy Settlements and Claims,
United States Claim No. COL-0280086.

Debtor:

STANDARD RICE COMPANY,

Post Office Drawer 2731, Houston, Texas.

The claim(s) of the United States for the balance due under contract No. NOs-45097, dated November 13, 1935, or \$6,145.37.

representing the difference between the entire overpayment under such contract of \$8,479.60, and \$2,334.23, the amount collected by Certificate No. 0455908, dated July 30, 1937, which overpayment resulted from the fact that (1) this contract contains a tax clause as follows:

"Prices bid herein include any federal tax heretofore imposed by the Congress and made applicable to the material on this bid. Any sales tax, duties, imposts, revenues excise, or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

(2) that no payment was made by the contractor to the United States of the amount of processing tax imposed by Congress on the supplies furnished and the legal liability for payment thereof has been removed by decision of the Supreme Court in United States v. Butler, 297 U. S. 1, and (3) that payment was made at the bid price for all supplies delivered under the named contract. The indebtedness, an amount equivalent to the processing tax included in the bid price of supplies furnished, is computed as follows:

Contract No. NOs-45097, dated November 13, 1935:

Vouchers Nos. 40638, 44141, 44142, 50181, 50182, 50183, and 59487, December 1935 and January, February, March, 1936, accounts of W. N. Hughes.

Invoices Nos. 1152, 1216, 1215, 1214, 1217, 1335, dated November 29, December 10, 12, and 21, 1935, respectively.

Item	No. of lbs.	Tax per pound	Total tax
Rice	564,800	• \$.0145	\$8,479.60
Less amount collected by Certificate of Settlement No. 0455908, dated July 30, 1937			2,334.23
Total amount due the United States			\$6,145.37

has (have) been settled and the sum of Six Thousand One Hundred Forty-five dollars and thirty-seven cents has been found due the United States per above certificate number. The amount due should be remitted to this office promptly, by check, draft, or money order payable to the "United States."

R. N. ELLIOTT,

Acting Comptroller General of the United States,

By W. J. MCCARTHY.

\$6,145.37.

NOTE.—If a debtor desires a review of this settlement, or any item thereof, application should be filed, with a statement of the

reasons therefor, within one year from the date hereof, in the Division of Law, Office of the Comptroller General.

Exhibit F to petition

General Accounting Office—Claims Division
Washington

SETTLEMENT OF CLAIM

APRIL 24, 1941.

No. 0280086 (3).
STANDARD RICE COMPANY, INC.
Post Office Drawer 2731,
Houston, Texas.

Your claim has been examined and action thereon has been taken as more fully explained in the following statement.

If an amount is indicated as payable, this should be retained to identify check which will issue in due course, unless otherwise advised.

Statement of Settlement:

Claimed	-----	\$	-----
Exception(s)	-----		-----
Allowed	-----		-----

COMPTROLLER GENERAL OF THE
UNITED STATES,
By F. A. SHUMAKER,

Claims Reviewer.

Claim for \$6,145.37, representing refund of income tax listed on Supplemental Schedule No. JT-74630, dated December 28, 1940, overassessed for the taxable year 1938, certificate No. 2544993, is hereby allowed in full and applied in liquidation of claimant's indebtedness to the United States in the amount of \$6,145.37, as hereinafter stated.

Separate check in the amount of \$6,145.37 will issue to the Treasurer of the United States in due course for deposit to the credit of "17X0806 Naval Supply Account Fund" to effect liquidation of the indebtedness of Standard Rice Company, Inc., to the United States as set out in detail on certificate of Settlement No. US-4738-Navy, dated January 10, 1938.

General traverse

Filed December 11, 1941

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies

each and every allegation therein contained; and asks judgment that the petition be dismissed.

SAMUEL O. CLARK, Jr.,
Assistant Attorney General.

FKD.

Argument and submission of case

On December 7, 1943, the case was argued and submitted on merits by Mr. Milton K. Eckert for plaintiff and by Mrs. Elizabeth B. Davis for defendant.

49 *Special findings of fact, conclusion of law and opinion of the court by Madden, J.*

Filed February 7, 1944.

Mr. Milton K. Eckert for the plaintiff. Mr. John C. White was on the briefs.

Mrs. Elizabeth B. Davis, with whom was Mr. Assistant Attorney General Samuel O. Clark, Jr., for the defendant. Messrs. Robert N. Anderson and Fred K. Dyar were on the brief.

This case having been heard by the Court of Claims, the court, upon a stipulation of the parties, makes the following

Special findings of fact

1. Plaintiff, Standard Rice Company, Inc., is a corporation organized and existing under the laws of the State of Texas, having its principal office in Houston, Texas, and at all times mentioned herein was engaged in the business of milling rice for sale to various buyers, including the United States.

2. Each sum hereinafter stated to have been paid by plaintiff was paid to the Collector of Internal Revenue for the First District of Texas and was thereafter deposited by him with the Treasurer of the United States in the usual course of business.

3. October 15, 1935, plaintiff filed with the Collector of Internal Revenue for the First Texas District, its federal income tax return for the fiscal year ended July 31, 1935, disclosing a tax due of \$25,502.43, which amount plaintiff paid to the Collector in four equal installments, one each on October 15, 1935, January 15, 1936, April 15, 1936, and July 15, 1936.

50 4. Thereafter, one of the field agents of the Commissioner of Internal Revenue audited plaintiff's income tax return for the fiscal year ended July 31, 1935, and determined that plaintiff had made an overpayment in income tax for that year in the amount of \$2,334.23. In due course, the Commissioner of Internal Revenue caused a certificate of overassessment No. 1408269 to be issued showing that this sum was owing to plaintiff. A copy of this certificate is attached to the petition herein as Exhibit A, and is incorporated herein by reference.

5. Payment not having been made on the overassessment, for reasons set forth in finding 15, plaintiff, on June 13, 1938, filed with the Collector of Internal Revenue for the First District of Texas its claim for refund of said sum of \$2,334.23, being the overpayment of income taxes for the fiscal year ended July 31, 1935. Plaintiff has not received notice from the Commissioner of Internal Revenue by registered mail, or otherwise, of the disallowance of such claim for refund, or of any part thereof, but was advised by the Commissioner, by letter dated September 20, 1938, that in view of the fact that the refund of income tax had been withheld by the Comptroller General in connection with plaintiff's alleged indebtedness to the United States for processing taxes, the claim had been forwarded to that official for consideration and appropriate action.

6. October 15, 1938, plaintiff filed with the Collector of Internal Revenue for the First Texas District its federal income tax return for the fiscal year ended July 31, 1938, disclosing a tax due of \$25,677.99, which amount plaintiff paid to the Collector, in four installments, one each on October 15, 1938, and January 15, April 15, and July 15, 1939.

7. October 13, 1939, plaintiff filed claim for refund for the tax for the fiscal year ended July 31, 1938, in the amount of \$25,677.99, with the Collector of Internal Revenue for the First Texas District. This claim was based upon the ground that instead of having a net taxable income for the fiscal year ended July 31, 1938, plaintiff had sustained a net loss for that year, and that consequently the income tax had been erroneously and illegally paid and collected. Thereafter, field agents of the Commissioner of Internal Revenue audited plaintiff's income tax return for the year in question and determined that there had, in fact, been an overpayment by plaintiff of tax in the amount claimed. In due course, the Commissioner of Internal Revenue caused certificate of overassessment No. 2544993 to be issued showing that this sum, \$25,677.99, was owing to plaintiff. A copy of this certificate of overassessment is attached to the petition herein as Exhibit B, and is incorporated herein by reference.

8. February 6, 1941, plaintiff received a partial refund from the United States of the overpayment of income tax for the year ended July 31, 1938, such partial payment amounting to \$19,532.62, plus interest thereon in the amount of \$2,018.13. Refund of the balance of \$6,145.37 has not been made, for the reasons set forth in finding 16.

9. Since the filing of the claim for refund for \$25,677.99 on account of overpayment of income tax for the fiscal year ended July 31, 1938, mentioned in finding 7, plaintiff has not received notice from the Commissioner of Internal Revenue by registered

mail or otherwise, of the disallowance of such claim for refund or any part thereof.

10. November 13, 1935, plaintiff entered into a contract with the defendant, being contract No. NOs-45097 a copy of which is attached to the petition herein as Exhibit C, and is made a part hereof by reference, under which plaintiff agreed to supply rice to the Navy Department at the bid prices specified in the contract, a typical price provision of which reads as follows:

Item	Pounds (about)	Unit price (per pound)	Total
1. Rice	200,000	0.046	\$13,340.00

11. The contract contained, in schedule 5916, the following provision:

"Prices bid herein include any federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoices as a separate item."

12. Under the terms of the contract, plaintiff delivered to the United States 584,800 pounds of milled rice, and received full payment from the United States, in accordance with the terms of the contract in December 1935, and January, February, and March 1936.

13. Plaintiff, as the first domestic processor of rice, paid the processing taxes imposed by the Agricultural Adjustment Act of May 12, 1933, as amended, from April 1, 1935, to September 20, 1935. Before paying the processing tax on the rice processed for the month of October 1935, plaintiff applied to, and obtained from, the United States District Court for the Western District of Texas (No. 577 in Equity) an injunction against the Collector of Internal Revenue, prohibiting the collection from it of any further processing taxes, and no processing taxes were paid by the plaintiff after the month of September 1935. Plaintiff particularly did not pay to the United States or any of its officers processing taxes imposed upon it under the authority of the Agricultural Adjustment Act, as amended, on the supplies furnished to the United States under Contract NOs-45097, amounting to the sum of \$8,479.60.

14. The Comptroller General, on behalf of the United States, as more fully set forth in finding 15, asserted a claim against plain-

tiff for \$8,479.60 (being United States claim No. 0280086), on the theory that there had been an overpayment by the United States on contract No. NOs-45097, since plaintiff had failed to pay the processing tax on the rice delivered under the contract. In computing the amounts claimed, the Comptroller General used \$.0145 per pound of milled or clean rice as the equivalent of the processing tax of \$.01 per pound of rough rice. This conversion factor of \$.0145 per pound was established by Regulations made, pursuant to the Agricultural Adjustment Act, by the Secretary of Agriculture, with the approval of the President, dated March 30, 1935, as revised and, in part, superseded by Regulations made by the Acting Secretary of Agriculture, with the approval of the President, dated July 31, 1935, Treasury Decision 4586. The amount of \$8,479.60 claimed by the Comptroller General was computed as follows:

Item	Quantity, pounds	Tax rate per lb.	Total tax
Rice	584,800	0.0145	\$8,479.60

15. As stated in finding 5, payment of \$2,334.23 under certificate of overassessment No. 1408269, issued by the Commissioner of Internal Revenue on account of plaintiff's overpayment of income taxes for the fiscal year ended July 31, 1935, was withheld by the Comptroller General, who, on July 30, 1937, and January 40, 1938, issued his Notices of Settlement of Claim of the General Accounting Office (certificate No. 0455908, dated July 30, 1937, and certificate No. US-4738-Navy, dated January 10, 1938; claim No. 0280086), in which he certified that \$2,334.23 was due to plaintiff on account of income tax overassessed for the taxable year ended July 31, 1935, but that this sum had been credited by him against the alleged indebtedness of \$8,479.60 under contract No. NOs-45097, leaving a balance on said indebtedness of \$6,145.37. Copies of these Notices of Settlement of Claim of the General Accounting Office are attached to the petition herein as Exhibits D and E, and are incorporated herein by reference.

16. As stated in finding 8, payment of \$6,145.37 under certificate of overassessment No. 2544993, issued by the Commissioner of Internal Revenue for \$25,677.99 on account of plaintiff's overpayment of income taxes for the fiscal year ended July 31, 1938, was withheld by the Comptroller General who, on April 24, 1941, issued his Notice of Settlement of Claim of the General Accounting Office (claim No. 0280086 (3)), in which he stated that \$6,145.37, representing refund to plaintiff of income tax overassessed for the taxable year ended July 31, 1938, was allowed in full, but that this

sum was being credited by him against the balance of \$6,145.37 of the alleged indebtedness under contract No. NOs 45097. Copy of this Notice of Settlement of Claim of the General Accounting Office is attached to the petition herein as Exhibit F, and is incorporated herein by reference.

17. On or about October 28, 1939, plaintiff paid to the Collector of Internal Revenue for the First Texas District \$72,072.30 in unjust enrichment taxes, imposed by Title III of the Revenue Act of 1936, on account of its having been relieved of the payment of processing taxes as set out in finding 13 above. This unjust enrichment tax was computed and assessed upon the basis of the inclusion of units involved in the claim of the Comptroller General. If those units had been excluded, the correct unjust enrichment tax would have been \$70,365.71, a difference of \$1,706.59.

18. No part of the overpayments of income tax for the fiscal years ended July 31, 1935, and July 31, 1938, which were withheld by the Comptroller General, as shown in findings 15 and 16, has ever been refunded, or repaid, except by credits made by
54 the Comptroller General against the alleged indebtedness of plaintiff to the United States as above set forth.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a matter of law that the plaintiff is entitled to recover the sum of \$8,479.60 with interest as provided by law.

It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of eight thousand, four hundred seventy-nine dollars and sixty cents (\$8,479.60), with interest thereon as provided by law.

Opinion

MADDEN, *Judge*, delivered the opinion of the court:

The plaintiff, whose business was milling rice, made, on November 13, 1935, a contract to sell a large quantity of milled rice to the Government, for the Navy. The contract contained the following paragraph:

"Prices bid herein include any federal tax heretofore imposed by the Congress which is applicable to the material on this bid. Any sales tax, duties, imposts, revenues, excise or other taxes which may hereafter (the date set for the opening of this bid) be imposed by the Congress and made applicable to the material on this bid will be charged to the Government and entered on invoice as a separate item."

The plaintiff, as the first domestic processor, paid the processing taxes, imposed by the Agricultural Adjustment Act, for the rice which it milled from April 1, 1935, to September 20, 1935. It obtained an injunction against the further collection of the taxes, and paid no tax for rice milled after September 1935. It milled the rice, which it delivered under its contract with the Government, after September, and paid no processing taxes on it. The taxes would have been, if paid, \$8,479.60. In January 1936, the Supreme Court of the United States held the Agricultural Adjustment Act unconstitutional. *United States v. Butler*, 297 U. S. 1. The taxes were, therefore, never collected, as taxes.

For the years 1935 and 1938, the plaintiff overpaid its income taxes by some \$28,000. The Government conceded the overpayment, but the Comptroller General, asserting that the plaintiff owed the Government \$8,479.60, the equivalent of what the processing taxes would have been on the rice contract, withheld that amount from the plaintiff's income tax refund. The plaintiff, denying its liability for the processing taxes or their equivalent, sues for the amount withheld.

As appears in finding 17, the plaintiff paid a large sum in 1939 as unjust enrichment taxes under Title III of the Revenue Act of 1936, apparently because it had collected from various purchasers processing taxes which it had not itself paid. Included in the transactions upon which these taxes were based were some units of the sales to the United States, as to which the Comptroller General held that the plaintiff owed the United States the amount of the unpaid processing taxes, which amount that official collected for the United States by the set-off complained of in this suit. The amount of the unjust enrichment taxes so collected which was attributable to the sales of rice to the United States, here in question, was \$1,709.59. The plaintiff claims, in the alternative, that it should recover at least that amount, and the Government concedes the validity of that claim.

The Government justifies the Comptroller General's action in collecting from the plaintiff by set-off the entire amount which the plaintiff would have had to pay, as taxes, if the Supreme Court had not held the Agricultural Adjustment Act unconstitutional, on the ground that the Government and the plaintiff, when they made the contract for the milled rice, contemplated that the tax would be paid, and included the tax in the contract price. The Government's theory seems to be that this contemplation, in the circumstances, rose to the dignity of an implied term of the contract to the effect that if the taxes were not paid, the contract price would be correspondingly reduced. It relies on the case of *United States v.*

Kansas Flour Corporation, 314 U. S. 212, where the Supreme Court held that, under a contract differing somewhat from the plaintiff's contract, the United States could recover the amount of the tax in a quasi-contract suit, under state law, to prevent unjust enrichment. In that case the contract provided that if any sales tax, processing tax or other taxes or charges "are imposed or changed by the Congress after the date set for the opening of the bid * * * and are paid to the Government by the contractor * * * then the prices named in this contract will be increased or decreased accordingly * * *"

56 The Government recognizes, of course, that the language of the contract involved in the Kansas Flour Corporation case was much more pointed, since it had in it a direct "up and down" clause relating the contract price to the amount of the tax. If, in that case, Congress had reduced or repealed the tax, the Government would have been entitled, by the very letter of the contract, to get back a corresponding part of the price paid. Whatever difficulties the case presented were caused by the fact that the contractor there had been relieved from paying the tax, as a tax, not by a repeal by Congress, but by the tax statute becoming unenforceable because of the Supreme Court's decision in *United States v. Butler*, supra. The Supreme Court was at pains to point out, in the Kansas Flour Corporation case, that Congress had, after the Butler decision, recognized, in legislation, the invalidity of the processing tax and had enacted the unjust enrichment tax, and that therefore there had been a change, by Congress, within the meaning of the contract there in question.

Because of the difference in the language of the two contracts, the Kansas Flour Corporation case, supra, is not a direct precedent against the plaintiff in this case. However, the Government points out that the Supreme Court used the following language, and urges that the language is applicable to the plaintiff's contract. The court said:

"In the case of private contracts, the vendees purchase for resale and the tax burden assumed is passed on to their customers. The fact that the processor—the vendor, is protected from the payment of the tax by injunction does not reduce the price to the vendee or to purchasers from him. The courts will not permit the unjust enrichment involved in recovery by the vendee of the amount of tax which he has passed on to his customers. In the contracts in question, the Government did not buy for resale. Unless it received the tax it suffered a definite disadvantage. Its purpose, as shown by the contracts, was to balance the tax element in the price paid with the tax collected. The Government, which could not pass

57 on the tax on resale, was thus protected, not against a fall in the market price but against a loss in its tax revenues. In cases of private sales, the processor's injunction against collection of the tax, as held by the cases cited, worked no harm to his vendee. A similar injunction in the case of Government contracts, would leave the price to the Government at the higher level reflecting the tax and deprive the Government of the reciprocal benefit flowing from collection of the tax."

"We are persuaded that there is a vital difference between the plaintiff's contract and that in the Kansas Flour Corporation case. In the Kansas case the processing tax was expressly mentioned, as the Supreme Court observes. In our case it is not mentioned by name, and there is no indication in the contract, or in any proved circumstance of the contract, that the parties had this tax in mind any more than they had tariff duties, for example, in mind. If Congress had reduced, or even repealed a tariff law applicable to rice, and if the plaintiff had thereupon imported rice and furnished it to the Government in fulfillment of its contract, we doubt whether the plaintiff would have been regarded as owing the amount of the tariff duty it would have had to pay, but for the repeal. Yet there would have been exactly as much reason for permitting the Government to sue for, or to offset the tariff duties of which the contractor was relieved, in that case as in the case of the processing tax.

We think that the language of the contract in the instant case does not express or imply an intention that the Government is to get, either as taxes or by offset or otherwise, the amount of any applicable federal tax which was in existence when the contract was made. We think the tax provision of the contract, which was drawn by the Government and whose ambiguities should therefore be resolved against the Government, may very well have been meant only to foreclose any argument as to whether federal taxes were payable upon federal purchases and the steps preparatory thereto. The statement that prices bid "include" specified things is customary in Government contracts, as to various named things which will, or may, have to be done to fulfill the contract. Presumably the bidder adds something to his bid to cover these things,

58 whether they are certain or contingent. Yet it has never been thought that if he gets the things that he must accomplish done cheaper, or escapes by good luck the expense of doing some or all of the contingent things, he should refund to the Government what it would have cost him to do them if costs had remained what they were when the contract was made, or if all the things that might have increased his costs had happened.

We think that, in general, the Government, as contractor, should be treated by the law as other contractors similarly circumstanced are treated.

The fact that the contract expressly provided that if new (or perhaps increased) federal taxes were levied on the materials, the Government would refund those taxes, seems to us to argue strongly that the reverse was not intended to be implied from the parties' silence.

We recognize that the Circuit Court of Appeals for the Tenth Circuit, in *United States v. American Packing and Provision Co.*, 122 F. (2d) 445, treated contracts of the two types in the same way, and held with the Government as to both; and that the United States District Court for the District of Massachusetts, in *Suncook Mills v. United States*, 44 F. Supp. 744, held for the Government in a case involving a contract like the plaintiff's. We also recognize that the denial of certiorari by the Supreme Court in the *American Packing* case, *supra*, shortly after its decision in the *Kansas Flour Corporation* case, *supra*, may indicate that the language of the court in the *Kansas Flour Corporation* case was more broadly intended than we have supposed.

We conclude that the plaintiff is entitled to recover \$8,479.60, with interest as provided by law.

It is so ordered.

WHITAKER, Judge; and LITTLETON, Judge, concur.

JONES, Judge; and WHALEY, Chief Justice, took no part in the decision of this case.

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Judgment of the Court

February 7, 1944

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a matter of law that the plaintiff is entitled to recover the sum of \$8,479.60 with interest as provided by law.

It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of eight thousand four hundred seventy-nine dollars and sixty cents (\$8,479.60), with interest thereon as provided by law.

61 [Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

(Filed June 12, 1944)

The petition herein for a writ of certiorari to the Court of Claims of the United States is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.